

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**EDDY CLARK,**

Plaintiff,

VS.

**MATTHEWS INTERNATIONAL  
CORPORATION,**

Defendant.

Case No. 4:07-cv-2027 (SNL)

**PLAINTIFF'S PRETRIAL DISCLOSURE BRIEF WITH EXHIBIT LIST**

Comes Now Plaintiff, Eddy Clark (“Clark”), and through his counsel, pursuant to the Court’s Case Management Order dated April 21, 2008, provides the following information, and exhibit list, in compliance with the Court’s order relating to trial.

## STIPULATIONS

Pursuant to Section II, paragraph 1 of the Court's Order relating to trial, Plaintiff submitted a Proposed Stipulation of Facts and Voir Dire Statements. Despite attempts to agree, the parties have only agreed to the following stipulated fact:

1. Clark was born on September 15, 1949.
2. Matthews maintains a St. Louis office for its Graphics Arts Division.
3. Clark worked for Matthews since May 18, 1992 as an Artist and Electronic Artist.
4. In 2006 and January 2007, Matthews had reductions in force ("RIF") at the St. Louis facility.

5. In 2006, Matthews terminated the following employees at the St. Louis facility:

Vicki Bates	born 1950	Terminated 8/18/06
Jacob Lutz	born 7/15/66	Terminated 9/8/06
Jacqueline Steed	born 1960	Terminated 10/5/06
Jason Pickens	born 1974	Terminated 10/6/06
Lynn Oder	born 1965	Terminated 10/6/06
Gary Smith	born 1942	Terminated 10/27/06

6. On January 31, 2007, the following employees were terminated from Matthews:

Ed Clark	born 1949
Tom Foster	born 1946
John Hardy	born 1958
Jim Morrison	born 1960
Donald Barton	born 1959
Jan Koprek	born 1956
James Runge	born 1955
Ron Styles	born 1953
Steve Anderson	born 1955

#### **VOIR DIRE STATEMENT**

**The Parties could not reach agreement as to a voir dire statement.**

**Plaintiff's counsel proposes the following voir dire statement:**

The Plaintiff Ed Clark ("Clark") is a 62 year old electronic graphics artist who brought a suit against Matthews International Corporation ("Matthews"), under a statute known as the Missouri Human Rights Act concerning his termination. Matthews is a Pennsylvania corporation with offices in many states. It does printing and primary packaging nationwide, and operates a section of its Graphics Arts Division in St. Louis.

Clark was terminated by Matthews on January 31, 2007 when Clark was 57 years old. Clark worked for Matthews in St. Louis since May 18, 1992 as an artist. His job was to prepare clients' "artwork" through the aid of a computer for printing on cardboard packaging. Clark

alleges that at the time of his termination, his age was a contributing factor to Matthews' decision to terminate him.

Matthews International Corporation contends that Clark's age was not a contributing factor in its decision to terminate Clark.

**WITNESSES**

Pursuant to Section II, paragraph 1 of the Court's Order relating to trial, Plaintiff states he will call the following witnesses to testify in this matter:

1. Eddy Clark.

Plaintiff may further call the following witnesses to testify in this matter:

1. Kerry Beaver.
2. Deena Zadylak
3. Matthews' Keeper of Records
4. Janet Koprek
5. Daniel Martinez
6. Randall Peek.
7. Lynn Oder.
8. Tom Foster.
9. Bob Follis,
10. Eric Nishbach,
11. Lillian Spruill,
12. James Morrison,
13. Jeffrey Buriss,
14. Stephen Anderson,
15. James Hoeff,
16. John Hardy,
17. Cindy Prinster,
18. Richard Otte,
19. William Styles,
20. Jennifer Messinger,
21. Michael Deloff.
22. Gary Lee West
23. Gary Smith
24. Jason Pickens
25. Jake Lutz
26. Jaqueline Steed

- 27. Jane Willerding
- 28. Jason Pickens
- 29. Brian Willsey
- 30. Donald Barton
- 31. Lisa Huseman

**PLAINTIFF'S EXHIBITS INDEX**

Pursuant to Section II, paragraph 3 of the Court's Order relating to trial, Plaintiff states:

**Plaintiff will introduce the following Exhibits into Evidence:**

- Exhibit 1 Charge of Discrimination/Missouri Commission on Human Rights, dated February 27, 2007
- Exhibit 2 Missouri Commission on Human Rights Notice of Right To Sue, dated November 30, 2007
- Exhibit 3 Affidavit of Deena Zadyak, dated July 1, 2009
- Exhibit 4 Memo to Deena Zadyak from Kerry Beaver regarding a partial Reduction list, dated January 10, 2007, Bates labeled 601 and MIC-EDC1851
- Exhibit 5 Memo to Deena Zadyak from Kerry Beaver regarding an update to the partial reduction list, dated January 14, 2007, Bates labeled 602, 603, and MIC-EDC1852, 1853
- Exhibit 6 Memo to Deena Zadyak from Kerry Beaver regarding Stl reductions, Dated January 19, 2007, Bates labeled 604 and MIC-EDC1854
- Exhibit 7 List of employees layed off on 01-31-07, Bated labeled EDC-MIC5127
- Exhibit 8 Matthews International Human Resource Policy No. 309, Subject: Layoff, dated revised January 1, 2007, Bates labeled 1081,1082 and MIC-EDC1596,1597
- Exhibit 9 Matthews Handbook Policy regarding Seniority, Bates labeled MIC-EDC1015

**Plaintiff may introduce the following Exhibits into Evidence:**

- Exhibit 10 Matthews layoff form for Eddy Clark, dated 1/30/07
- Exhibit 11 Eddy Clark's Confidential Separation Outline.
- Exhibit 12 Letter from Deena Zadylak to EEOC Investigator Ms. Lynne Morgan, Dated March 30, 2007, regarding Matthews complete response to the allegation by Eddy Clark, Bates labeled 1094 thru 1098 and MIC-EDC1581 thru 1597
- Exhibit 13 Letter from MCHR Human Relations Officer Tammy Carlyle to Deena, Zadylak, dated July 10, 2007, requesting additional information from Matthews
- Exhibit 14 Letter from Deena Zadylak to MCHR Human Relations Officer Tammy Carlyle, dated August 3, 2007, regarding Matthews complete response to questions regarding Eddy Clark, Bates labeled 1087 thru 1093 and MIC-EDC1617 thru 1622
- 14A. List of all persons employed in Complainant's Department/work area as of 1/29/07
- 14B. List of all persons selected for permanent layoffs As of 1/31/07
- 14C. List of employees laid off prior to Complainant
- 14D. Complainant's job description, Bates labeled MIC-EDC1626 thru 1628
- 14E. Notice of disciplinary action for Jason Pickens dated 2/17/06
- 14F. Notice of disciplinary action for Jason Pickens dated 5/8/06, Bates labeled MIC-EDC1630
- 14G. Notice of disciplinary action for Eric Nischbach Dated 12/11/06, Bates labeled MIC-EDC1631
- 14H. Notice of disciplinary action for Cindy Printer Dated 2/17/09, Bates labeled MIC-EDC1632
- 14I. Memo regarding coaching session between Randy Peek and James Hoef, dated 7/27/05, signed and Dated 7/28/07, Bates labeled MIC-EDC1633
- 14J. Notice of disciplinary action for Charles Penn

Dated 12/11/06, Bates labeled MIC-EDC1634

14K. Eddy Clark employee conference form, dated  
5/25/04, Bates labeled MIC-EDC1635

14L. Tom Foster employee conference form, dated  
5/25/04, Bates labeled MIC-EDC1636

14M. Copy of error reports generated and/or maintained  
On employees in Complainant's department within  
The six months prior to Complainant's layoff,  
Bates labeled MIC-EDC1637 thru 1664

Exhibit 15 Matthews Handbook Policy regarding Equal Opportunity, Bates labeled  
MIC-EDC1016

Exhibit 16 Matthews Handbook Policy regarding Discrimination and Harassment, Bates  
labeled MIC-EDC1010

Exhibit 17 Matthews Handbook Policy regarding Unlawful Harassment, Bates labeled MIC-  
EDC1023 thru 1025

Exhibit 18 Matthews Handbook Policy regarding Retirement, Bates labeled  
MIC-EDC1133 thru 1134

Exhibit 19 Matthews Handbook Policy regarding Performance Reviews, Bates labeled MIC-  
EDC1017

Exhibit 20 Letter from Beth Conte, Compensation and Benefits Manager to Eddy  
Clark, dated 9/12/05, regarding the American Association of  
Retired Persons

Exhibit 21 Letter from Beth Conte, Compensation and Benefits Manager to Thomas  
Foster, dated 8/4/05, regarding the American Association of  
Retired Persons, Bates labeled MIC-EDC2110 and 2111

Exhibit 22 Eddy Clark personnel file, Bates labeled MIC-EDC1391-1416

Exhibit 23 Eddy Clark Employee Performance Review, dated 7/30/02,  
Bates labeled MIC-EDC1396

Exhibit 24 Eddy Clark Employee Performance Review, dated 7/28/05,  
Bates labeled MIC-EDC1394 and 605 and 606

Exhibit 25 Eddy Clark Employee Performance Review, dated 7/26/06,  
Bates labeled 1210 and 1211

- Exhibit 26 Eddy Clark Employee Performance Review, dated 7/30/02  
Bates labeled MIC-EDC1395
- Exhibit 27 January 31, 2007 letters from Matthews to Clark,  
Bates labeled MIC-EDC1417 thru 1421
- Exhibit 28 List of all individuals employed at Matthews' St. Louis  
Location from 2006 to present Bates labeled  
MIC-EDC3310
- Exhibit 29 Employees terminated from 2006 to present  
Bates labeled MIC-EDC3308
- Exhibit 30 List of all individuals employed at the Matthews' St. Louis  
Location from 2006 to present Bates labeled MIC-EDC3309
- Exhibit 31 Eddy Clark hourly pay rate Bates labeled MIC-EDC1438-1443
- Exhibit 32 Eddy and Brenda Clark's 2002 U.S. individual tax return
- Exhibit 33 Eddy and Brenda Clark's 2007 U.S. individual tax return
- Exhibit 34 Eddy and Brenda Clark's 2008 U.S. individual tax return
- Exhibit 35 Eddy Clark's 2008 W-2 Wage and tax statements from Kohl's  
Department Stores, The Good Samaritan and Whelan Security Co.
- Exhibit 36 Eddy Clark's Earnings Statements from The Good Samaritan  
From 7/19/08 to 9/23/08
- Exhibit 37 Eddy and Brenda Clark's 2009 U.S. individual tax return
- Exhibit 38 Eddy and Brenda Clark's 2010 income tax return
- Exhibit 39 Eddy Clark's 2011 Whelan Security Co. check records
- Exhibit 40 Eddy Clark's 2011 Cape Albeon check stubs
- Exhibit 41 2007 and 2008 Employee/Employer Health Insurance Contribution Comparison  
Based on Monthly Costs
- Exhibit 42 Handwritten list of companies Clark contacted for employment
- Exhibit 43 Memo from Eddy Clark to [captdefense@yahoo.com](mailto:captdefense@yahoo.com)— St. Louis  
Security Professionals regarding an employment interview,  
Dated 4/4/08

- Exhibit 44 Memo from Eddy Clark to [Kevin\\_addison@fastmail.fm](mailto:Kevin_addison@fastmail.fm), regarding Hotel security officer employment position, dated 9/13/08
- Exhibit 45 Memo to Eddy Clark from the Transportation Security Administration Regarding meeting eligibility requirements for employment, dated 3/5/09
- Exhibit 46 Email memo from Joshua Avigad to Eddy Clark regarding directions And address for the TSA Security Screener Test, dated 3/4/09
- Exhibit 47 Memo to Eddy Clark from the Transportation Security Administration Notifying him of not passing the computerized testing process for Employment, dated 3/5/09
- Exhibit 48 Email (3/5/09) forwarded to Joshua Avigad from Eddy Clark regarding Applying for another security job, dated 9/13/08
- Exhibit 49 Email (3/5/09) forwarded to Joshua Avigad from Eddy Clark regarding Applying for a security job, dated 4/4/08
- Exhibit 50 Email (3/5/09) forwarded to Joshua Avigad from Eddy Clark regarding Applying for a cleaning job part time, dated 3/2/08
- Exhibit 51 Missouri Career Center Internet Job Search Sites
- Exhibit 52 Eddy Clark's List of Indeed Daily Job Alerts for security jobs in St. Louis
- Exhibit 53 Matthews job posting on Monster.com for a Graphic Artist-Prepress Bates labeled EDC-MIC5347-5348
- Exhibit 54 Metro Job Fair application, 5/15/08 (MIC-EDC 3753-3754).
- Exhibit 55 2002 Matthews' sales presentation, Beaver deposition, Exhibit 7
- Exhibit 56 Page 37 from Exhibit 55
- Exhibit 57 page 45 from Exhibit 55
- Exhibit 58 Matthews St. Louis Art Department Layout
- Exhibit 59 Photos taken by Jan Koprek on December 18, 2004 with approximate Dates of Apple releases for specific models
- Exhibit 60 Personnel file of Eddy Clark
- Exhibit 61 Personnel file of Stephen Anderson, Bates labeled MIC-EDC



2154-2207

- Exhibit 62 Personnel file of Jeffrey Burris, Bates labeled MIC-EDC2623-2659
- Exhibit 63 Personnel file of Thomas Foster, Bates labeled MIC-EDC2085-2136
- Exhibit 64 Personnel file of James Morrison, Bates labeled MIC-EDC1695-1696 and 2063-2083
- Exhibit 65 Personnel file of Lillian Spruill, Bates labeled MIC-EDC2660-2886
- Exhibit 66 Personnel file of John Hardy, Bates labeled MIC-EDC2137-2148
- Exhibit 67 Personnel file of Jane Haussels, Bates labeled MIC-EDC2455-2503
- Exhibit 68 Personnel file of Janet Koprek, Bates labeled MIC-EDC2019-2062
- Exhibit 69 Eric Nischbach Employee Performance Review, Bates labeled MIC-EDC 2553-2554
- Exhibit 70 Notice of Disciplinary Action for Eric Nischbach, Bates labeled MIC-EDC1629
- Exhibit 71 Lynn Oder Employee Performance Review, Bates labeled MIC-EDC 2895-2900
- Exhibit 72 Personnel file of Richard Otte, Bates labeled MIC-EDC2407-2454
- Exhibit 73 Richard Otte Employee Performance Review, Bates labeled MIC-EDC 2408-2409 and 1200-1201
- Exhibit 74 James Hoeff, Jr. Employee Performance Review, Bates labeled MIC-EDC 2504-2507 and 1204-1207
- Exhibit 75 Personnel file of Robert Follis, Bates labeled MIC-EDC2597-2622
- Exhibit 76 Cynthia Prinster Employee Performance Review, Bates labeled MIC-EDC 1673-1674 and 609-610 and 1202-1203
- Exhibit 77 Division of Employment Security letter to Matthews regarding Jason Pickens claim for unemployment benefits, Bates labeled MIC-EDC 2973-2978
- Exhibit 78 Personnel file of Jason Pickens, Bates labeled MIC-EDC2982-3002
- Exhibit 79 Eddy Clark's Earnings Statements from The Good Samaritan, Bates labeled MIC-EDC5412-5416

- Exhibit 80 Randy Peak Personnel file MIC-EDC 1909-2018
- Exhibit 81 Subpoena to Matthews' Corporate Representative, 9/26/08, w/ attachment
- Exhibit 82 Defendant Matthews International Corp. Answers to Plaintiff's Complaint
- Exhibit 83 Defendant Matthews International Corp. First Amended Answers to Plaintiff's Complaint
- Exhibit 84 Defendant Matthews International Corp. Answers to Plaintiff's First Set of Interrogatories.
- A. MIC- ED 3308 attached.
- B. MIC-EDC 3309 attached.
- C. MIC-EDC 3310 attached
- D. MIC-EDC 2211 attached.
- E. MIC-EDC 3312 – 3313 attached
- Exhibit 85 Ed Clark's certificate from Matthews International Graphic Systems Division, Macintosh Computer Graphics Team, February 1994, for completing the required training for Computer Graphics Artist
- Exhibit 86 Defendant's Responses to Plaintiff's First Document Production Requests
- Exhibit 87 Defendant's Supplemental Responses to Plaintiff's First Document Production Requests
- Exhibit 88 Missouri State Labor Law Posters, Bates labeled MIC-EDC1546 and 1549
- Exhibit 89 Matthews Employment Application for Eddy Clark, Bates labeled MIC-EDC1406 and 322-323
- Exhibit 90 Eddy Clark Resume, Bates labeled MIC-EDC1407-1408 and 324-325
- Exhibit 91 Memo from Kenn Compton of CPCC to Eddy Clark regarding his Completion of his degree at CPCC in the 70's
- Exhibit 92 Memo to Janet Koprek from Lisa Huseman regarding letter of

Recommendation, dated 2/1/07

- Exhibit 93     Memo to Marie Chavis from Dan Mahlin regarding rehire of two past Employees, dated 1/18/01, Bates labeled MIC-EDC2906
- Exhibit 94     Matthews' new employee checklist for Jason Pickens rehire, Bates labeled MIC-EDC2986
- Exhibit 95     Matthews' letter from Deena Zadyak to Jason Pickens regarding Outplacement support program, dated 10/5/04, Bates labeled MIC-EDC 2990
- Exhibit 96     Notice of Disciplinary Action for Jason Pickens, dated 5/8/06, Bates labeled MIC-EDC2981
- Exhibit 97     Bates labeled document MIC-EDC5370
- Exhibit 98     Eddy Clark's Deposit Advice's from Kohl's, Bates labeled MIC-EDC5371-5398
- Exhibit 99     Eddy Clark's Direct Deposit Advice's, Bates labeled MIC-EDC 5399-5402
- Exhibit 100    Eddy Clark's pay advice's from Missouri Division of Employment Security, Bates labeled MIC-EDC5403-5411
- Exhibit 101    Confidential Separation Outline for Janet Koprek, Bates labeled MIC-EDC2047
- Exhibit 102    Matthews STL demographics, Bates labeled 773-774
- Exhibit 103    Letter from Debbie Way (Compensation & Benefits Specialist) to Janet Koprek regarding her right to continue insurance coverage under the Matthews International Corp. group health plan, dated 1/31/07, Bates labeled MIC-EDC2033-2038
- Exhibit 104    Missouri Commission on Human Rights Charge of Discrimination filed by Janet Koprek, 6/21/07, Bates labeled MIC-EDC5434
- Exhibit 105    Missouri Commission on Human Rights Notice of Right to Sue for Janet Koprek, dated 11/9/07, Bates labeled MIC-EDC5435-5436
- Exhibit 106    Matthews STL demographics, Bates labeled MIC-EDC5420-5421
- Exhibit 107    Memo from Monster Job Search Agent to Jan Koprek regarding job search Results, dated 5/22/08, Bates labeled MIC-EDC5430
- Exhibit 108    Memo from Jan Koprek to Lisa at [graphicsjobs@hotmail.com](mailto:graphicsjobs@hotmail.com) regarding Graphic Artist-Prepress position, dated 5/22/08, Bates labeled MIC-EDC

5431

- Exhibit 109 Memo from Monster.com to Jan Koprek regarding confirmation of submission of job applied for, dated 6/13/08, Bates labeled MIC-EDC5432
- Exhibit 110 Memo from Lisa Huseman to Jan Koprek, regarding returning to work, Dated 6/20/08, Bates labeled MIC-EDC5433
- Exhibit 111 Memo from Lisa Huseman to Janet Koprek regarding letter of recommendation, dated 2/1/07, Bates labeled MIC-EDC5428-5429
- Exhibit 112 Letter from Kerry Beaver to Janet Koprek regarding previous employment information, dated 3/12/07, Bates labeled MIC-EDC5425
- Exhibit 113 Equal Employment Opportunity Commission Intake Questionnaire for Janet Koprek, Bates labeled MIC-EDC5437-5441
- Exhibit 114 Employee Performance Reviews for Janet Koprek, Bates labeled MIC-EDC2024-2031 and EDC-MIC5426-5427; Employment Eligibility Verification for Janet Koprek, Bates labeled MIC-EDC2053
- Exhibit 115 Matthews International Annual Report 2006
- Exhibit 116 Matthews International Annual Report 2007, Bates labeled MIC-EDC3220-3307
- Exhibit 117 Matthews International Company Handbook, Bates labeled MIC-EDC 1000-1389
- Exhibit 118 Eddie Clark Deposition, taken October 7, 2008, and Exhibits to same.
- Exhibit 119 Tom Foster' Deposition and all Exhibits to same.
- Exhibit 120 Randall Peek Deposition, and exhibits attached to same.
- Exhibit 121 Kerry Beaver Deposition, and exhibits attached to same.
- Exhibit 122 Janet Koprek Deposition, and exhibits attached to same
- Exhibit 123 Daniel Martinez Deposition, and exhibits attached to same.
- Exhibit 124 Deena Zadylack deposition, and exhibits attached to same.
- Exhibit 125 Signed note from Randall Peek to Deena Zadylak, dated 3/27/07 (SJ EX 4).
- Exhibit 126 Ron Styles Personnel File (MIC-ED 2239-2264; 2277-2283; 2287-2302; 2305-2317

Exhibit 127 Jim Runge Personnel File (MIC-EDC 2318-2364)  
Exhibit 128 Jen Mersinger Personnel File (2365-2406)  
Exhibit 129 Wildering Personnel file (MIC-2455-2503)  
Exhibit 130 James Hoeff Personnel File (MIC-EDC 2504-2538)  
Exhibit 130 Eric Nischbach Personnel File (MIC-EDC 2539-2573)  
Exhibit 131 Cindy Prinster Personnel File (MIC-EDC 2574-2596; 1673-1674)  
Exhibit 132 Mike Deloef Personnel File (MIC-EDC 2699-2730; 2887-2888)  
Exhibit 133 Lynn Oder Personnel File

Further, Plaintiff intends to put into evidence his legal fees and costs at the conclusion of the litigation, and upon a hearing by the Court to address same, as EXHIBIT 134.

In addition to the exhibits detailed above, Plaintiff may seek to have submitted into evidence Exhibits that summarize the evidence presented into evidence, including but not limited to:

1. Exhibit 135, Summary Time Line of Red, Blue, Purple Teams from 2000/2001 to January 31, 2007.
2. Exhibit 136, Probability Distribution of Protected Age Employees being laid-off during the Clark Termination Event.

**INTERROGATORIES AND ADMISSIONS PLAINTIFF MAY USE AT TRIAL**

Pursuant to Section II, paragraph 4 of the Court's Order relating to trial, Plaintiff states he may submit the following interrogatory answers into evidence: Defendant Matthews International Corp. Answers to Plaintiff's First Set of Interrogatories: 1 (and document cited therein), 2 (and document cited therein); 3( and documents cited therein); 4; Further, Plaintiff may use Defendants' Responses to First document Production Requests, 1, 2, 3, 4, 5, 6, 7, 8, 9,

10, 11, 12, 13, 14, 15, 16,17; and Defendants' Supplemental Responses to First document Production Requests, 1, 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16, 17; Answers in Answer ¶¶, 2,4,10, 35,36,37,39,40,41,42,43,44,45,46,47; Answers in Amended Answer ¶¶ 2, 4, 10, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47.

**DEPOSITION CITATIONS THAT WILL OR MAY BE USED**

Nov 5, 2008 Zadylack Corporate Representative deposition, will use: p. 107, ln 18-22; p. 107, ln 23 to p. 108, ln 103.

As to the November 5, 2008 Zadylack Corporate Representative deposition, Plaintiff may use the following testimony: p. 5, ln 2-9; p. 5, ln 11-17; pp. 6-8; p. 6, ln 13-19; p. 7, ln 11 to p. 8, ln 23; p. 9, ln 1-5.p. 10, ln 16-23;p. 11, ln 1-9; p. 11, ln 10-22; p. 12, ln 10-13; p. 12, ln 14-23; p. 13, ln 1-4; p. 13, ln 8 to p. 14, ln 23; p. 5, ln 1 to p. 17, ln 17. P. 17, ln 18 to p. 18, ln 4; p. 18, ln 8 to p.20, ln 5;p. 20, ln 11 to p. 21, ln 12; p. 21, ln 13-17; p. 21, ln 18; p. 22, ln 2-7; p. 23, ln 13-23; p. 24, ln 1 to p. 28. Ln 22; p. 28, ln 23 to p. 30 to p. 30, ln 21; p. 30, ln 22 to p. 31, ln 7; p. 31, ln 8 -13; p. 31, ln 14-19; p. 31, ln 20 to p. 32, ln 16; p. 32, ln 17-22; p. 32, ln 23, ln 19; p. 34, ln 6-12; p. 34, ln 13-10; p. 35, ln 11-21;p. 36, ln 18 to p. 37, ln 12; p. 37, ln 15-22; p. 38, ln 8 to p. 39, ln 20; p. 42, ln 8-12;; p. 44, ln 20 to p. 45, ln 24; p. 45, ln 15-21; p. 45, ln 22 to p. 47, ln 23; p. 48, ln 3, ln 10; p. 49, ln 1-4; p. 49, ln 5-22; p. 50, ln 14 to p. 51, ln 6; p. 51, ln 7-111, p. 21; p. 52, ln 9-14; p. 52, ln 15-20; p. 52, ln 21 to p. 53, ln 3; p. 53, ln 4-19; p. 53, ln 20 to p. 54, ln 14; p. 54, ln 15-18; p. 54, ln 19-23; p. 55, ln 1-21; p. 55, ln 22 to p. 56, ln 9;p. 58, ln 21-23.; p. 59, ln 19-23;; p. 62, ln 1-5; p. 62, ln 6-9; p. 64, ln 22 to p. 65, ln 3; p. 65, ln 4-5; p. 65, ln 6-12; p. 65, ln 21 to p. 66, ln 22; p. 66, ln 23 to p. 67, ln 9; p. 67, ln 10-18;p. 67, ln 19 to p. 69, ln 17; p. 71, ln 4-21; p. 71, ln 22 to p. 73, ln 1; p. 73, ln 2-14; p. 73, ln 15-22; p. 73, ln 23 to p. 74, ln 6; p. 74, ln 13-21; p. 75, ln 10-15; p. 75, ln 16 to p. 76, ln 12; p. 77, ln 21 to p. 78, ln 2; p. 78, ln 6-11;

p. 78, ln 12-19; p. 78, ln 23 to p. 80, l 11; p. 80, ln 22 to p. 81, ln 7; p. 82, ln 1-8; p. 83, ln 18-23; p. 84, ln 1-17; p. 85, ln 1-20; p. 85, ln 21 to p. 86 ln 14; p. 87, ln 7-19 p. 88, ln 18-20; p. 88, ln 1 to p. 89, ln 21; p. 89, ln 22 to p. 90, ln 2; p. 90, ln 3-12, p. 90, ln 13-20; p. 90, ln 21 to p. 91, ln 1; p. 91, ln 2-10; p. 91, ln 11-13; p. 91, ln 14-20; p. 91, ln 21 to p. 92, ln10; p. 92, ln 12-21; p. 92, ln 22-93, ln 21; p. 93, ln 22 to p. 94, ln 9; p. 94, ln 10 to p. 95, ln 8; p. 95, ln 9-11; p. 95, ln 14 to p. 96, ln 10; p. 96, ln 11-15; p. 96, ln 16 to p. 97, ln 23; p. 98, ln 1 to p. 98, ln 7; p. 98, ln 8-20; p. 98, ln 21 to p. 99, ln 1; p. 99, ln 2-4; p. 99, ln 6-21. P. 99, ln 22 to p. 100, ln 23; p. 101, ln 10-13; p. 101, ln 19 to p. 103, ln 4; p. 103, ln 5-8; p. 104, ln 6-9; p. 106, ln 17-22; p. 106, ln 23 to p. 107, ln 4; p. 107, ln 5-8; p. 107, ln 9-11; p. 107, ln 12-17; p. 107, ln 18-22; p. 107, ln 23 to p. 108, ln 103; p. 109, ln 1 1-7; p. 109, ln 8 to p. 110, ln 3; p. 110, ln 4 to p. 111, ln 7; p. 11, ln 8 to p. 111, ln 22, p. 1, ln 23 to p. 11, ln 12; p. 112, ln 13-20;; p. 112, ln 21 to p. 113, ln 5 and 115 ln 2-4; p. 115, ln 5-21; p. 115, ln 22 to p. 116, ln 1. P. 116, ln 2-14; p. 116, ln 20 to p. 117, ln 16; p. 117, ln 1-22; p. 117, ln 23 to p. 118, ln 5; p. 119, ln 1-7; p. 119 ln 817; p. 119, ln 18-2; p. 120, ln 4-21; p. 120, ln 22 to p. 121, ln 8; p. 121 ln 9 to p. 122, ln 11 p. 122, ln 17-21; p. 123, ln 1-21; p. 124, ln 2-21;. P. 125, ln 12 to p. 126, ln 21; p. 126, ln 22 to p. 127, ln 2; p. 128, ln 3- 129, ln 16; p. 129, ln 17 to p. 130, ln 22; p. 130, ln 23 to 131, ln 14; p. 131, ln 15-18; p. 12, p. 133 ln 4-13; p. 133, ln 19-23; p. 16 to p. 135, ln 18; p. 137, ln 1 to p. 138, ln 1; p. 138, ln 2-23; p. 139; p. 140, ln 2-23; p. 141, ln 1 to p. 142, ln 4; p. 142, ln 5 to 143, ln 3; p. 143, ln 4 to p. 144, ln 18; p. 144, ln 19 to p. 148, ln 6; p. 148, ln 7-23; p. 149, ln 21 to 151, ln 8;; p. 151 ln 9-11; p. 151, ln 16-21; p. 157, ln 9-14; p. 153, ln 22; p. 154, ln 2; p. 156, ln 17-18; p. 157, ln 13 to p. 158, ln 8; p. 158, ln 19 to p. 160, ln 1; p. 160, ln 14 to 161, ln 20; p. 162, ln 19 to p. 165, ln 20; p. 166, ln 5-19; p. 169, ln 19 to 170, ln 3; p. 170, ln 4-8; p. 170, ln 9 to 172, ln 5; p. 172, ln 10-17; p. 171, ln 18-173, l2; 173, ln 10 to ln 174, ln 7; p. 174, ln 8-15; p. 174, ln 16-23; p. 176, ln 17 to p. 177, ln 2;

p. 177, ln 22 to p. 180, ln 15; p. 181, ln 12-15; p. 182, ln 8 to 183, ln 8; p. 183, ln 9 to 184, ln 23; p. 185, ln 12-15; p. 185, ln 16-21; p. 186, ln 8 to p. 187, ln 6;; p. 191, ln 9 to 192, ln 4; p. 192, ln 6-13; 192, ln 17 to 193, ln 19; p. 194, ln 8-21; ln 195, ln 1-4; p. 195, ln 11-16; 195, ln 22 to 196, ln 4; p. 196 ln 5 to ln 8; p. 196, ln 9 to 196, ln 12; 196, ln 13 to 197, ln 3 to ln 13; 197, ln 15 to 198 ln 23; p. 199. Ln 23 to p. 200, ln 23; p. 202, ln 4 to p. 203, ln 18; p. 204, ln 3 to 205, ln 9; P. 206, ln 22 to p.207, ln 1 to p. 209, ln 10. P. 209, ln 20 to p. 210, ln 2 p. 210, ln 3 to p 214, ln 2; p. 214, ln 3 to p. 219, ln 10; p. 219, ln 22 to 220, ln 21; p. 22, ln 17 to 223, ln 16. P. 227, ln 6-11; p. 230, ln 22 to 231, ln 23; p. 232, ln 18 to p. 233, ln 22; p. 234, ln 9-11; p. 235, ln 21 to 236, ln 2; p. 238, ln 1 to 239, ln 21, p. 239, ln 21 to p. 240, ln 14; p. 240, ln 17 to 19. P. 241, ln 1 to 242, ln2 p-. 243, ln 6-10; p. 248, ln 15-23; p. 249, ln 20 to 253, ln 23; p. 255, ln 19 to 257, ln 19. P. 257, ln 20-23; p. 258, ln 6 to p. 263, ln20; p. 264, ln 3 to p. 265 ln 5; p. 270, ln 23 to 271, ln 6; p. 273, ln 2-4; p. 281, ln 16 to 285, ln 7; p. 285 ln 9-12; p. 285, ln 16 to p. 287, ln 6; p. 288, ln 10 to p. 291, ln 15; p. 292, ln 2 to 294, ln 12; p. 294, ln 22 to 298, ln 12; p. 298, ln 19 to 299 to 301, ln 15; p. 303, ln 13-14; p. 303, ln 22 to 304, ln 11; p. 305, ln 4 to p. 306, ln 13; p. 307, ln 6-16; p. 307, ln 17 to to 310, ln 13; p. 310, ln 23 to p. 312, ln 20; p. 313, ln 1 p. 315, ln 20; p. 316, ln 2 to p. 319, ln3; p. 319, ln 8 to 320, ln 3; p. 320, ln 4-12; p. 321, ln 12 to p. 322, ln 6; p. 322, ln 7 to 323, ln 9; p. 324, ln 10 -23.

As to the December 1, 2008 November 7, 2008 deposition of Kerry Beaver, Plaintiff may use the following testimony: p. 6, ln 11 to p. 7, ln 21; p. 10, ln 22 to p. 12, ln 6; p. 12, ln 22 to p. 13, ln 11; p. 13, ln 23 to p. 17, ln 24; p. 18, ln 1 to p. 19, ln 2; p. 19, ln 3 to p. 38, ln 24; p. 39, ln 1; p. 41, ln 2 to p. 42, ln 21; p. 46, ln 24 to to p. 48, ln 19; p. 49, ln 6 to p. 51, ln 9; p. 51, ln 14 to p. 55, ln 24; p. 56, ln 1 to p. 59, ln 19; p. 60, ln 1-5; p. 60, ln 7 to p. 61, ln 1; p. 61, ln 2-8; p. 61, ln 9 to p. 63, ln 1; p. 62, ln 2 to p. 64, ln 3; p. 64, ln 4 to p. 65, ln 8; p. 65, ln 19-23, p. 65, ln 24 to



66,ln 2; p. 66, ln 3 to 7; p. 66, ln 7-13; p. 66, ln 14-18; p. 66, ln 19-22; p. 66, ln 23 to p. 67, ln 1; p. 67, ln 2-11; p. 69, ln 20 to p. 71, ln 2; p. 71, ln 3 to p. 73, ln 14; p. 75, ln 22 to p. 76, ln 22; p. 78, ln 13-16; p. 78, ln 17 ln 17-23; p. 78, ln 24 to p. 79, ln 14; p. 80, ln 7-12;p. 80, ln 13 to p. 81, ln 3; p. 81, ln 12 to p. 82 ln 6; p. 82, ln 7 to p. 83, ln 23; p. 83, ln 24 to p. 84, ln 10,; p. 84, ln 1-21; p. 84, ln 22 to p. 85, ln 3; p. 85, ln 4 to p. 85, ln 22; p. 86, ln 5 -10; p. 86, ln 18 to p. 87, ln 10; p. 91, ln 20 to p. 94, ln 5; p. 94, ln 24-20; p. 95, ln 10 to p. 98, ln 2;; p. 98, ln 23 to p. 99, ln 13; p. 99, ln 14 to p. 100, ln 17. P. 100, ln 18-23; p. 100, ln 24 to p. 101, ln 8; p. 101, ln 9-21; p. 101, ln 22 to p. 102, ln 8 p. 102, ln 9- to p. 103, ln 9; p. 103, ln 10-14; p. 103, ln 21 to p. 104, ln 14; p. 104, ln 15-20; p. 104, ln 21 to p. 105, ln 4 to p. 105, ln 17; p. 106, ln 20-23; p. 106, ln 24 to p. 107, ln 6; p. 107, ln 7 to 22;; p. 109, ln 19-24; p. 110, ln 3-17; p. 113, ln 22 to p. 114, ln 16; p. 114, ln 17 -20; p. 114, ln 22 to . 5, ln 1; p. 115, ln 2-12; p. 116, ln 17 to p. 118, ln 10; p. 122, ln 20 to p. 123, ln 15; p. 123, ln 16 to p. 127, ln 9; p. 129, ln 7 to p. 133, ln 2.

As to the December 1, 2008 Deposition of Daniel Martinez, Plaintiff may use the following testimony: P 1, ln 1 to p. 111, ln 17; p. 11, ln 19-25; p. 13, ln 5 to p. 14, ln16; p. 14, ln 17 to p. 17, ln 17. P. 20, ln 3 to p. 21m ln 2; p. 21, ln 3-15.; p. 26, ln 24 to p. 27, ln 25;. P. 28, ln 17-25; p. 29, ln 17-21; p. 33, ln 17 to p. 36, ln 5 p. 36, ln 9 to p. 35, ln 15; p. 36, ln 16-19; p. 38, ln 20 to p. 42, ln 8; p. 54, ln 11-14;; p. 59, ln 15-20.; p. 66, ln 18-22; p. 66, ln 23 to p. 67, ln 17.; p. 67., ln 18-23; p. 70, ln 13-19; p. 70, ln 20 to p. 71, ln 23; p. 72, ln 14-17; p. 73, ln 6-14; p. 76, ln 22 to p. 77, ln 3.

As to the November 5, 2008 Deposition of Randall Peek, Plaintiff may use the following testimony: p. 4, ln 18 to p. 5, ln 12; p. 5, ln 17 to p. 7, l;n 6; p. 7, ln 10 to p. 8, ln 1; p. 8, ln 19 to p. 9, ln 5; p. 9, ln 6 to p. 10, ln 12 p. 10, ln 9 to p. 11, ln 8; p. 11, ln 7-13; p. 11, ln 14 to p. 12, ln 4;p. 12, ln 13 to 23, p. 13, ln 8-19; p. 14, ln 5-15; p. 14. Ln 19 to p. 15, ln 18; p. 18, ln 2-11; p.

18, ln 12-17; p. 18, ln 21-24; p. 18, ln 25 to p. 23.; p. 20, ln 2-5; p. 20, ln 6-10p. 20, ln 12-17; p. 21, ln 1 to p. 22, ln 9; p. 22 ln 10 to p. 23, ln 16; p. 23, ln 17-25; p. 24 ln 1-5; p. 24, ln 6-12 p. 25, ln 6-9, p. 25, ln 12 – 19; p. 25, ln 21 to p. 26, ln 5p. 26. Ln 6-20; p. 26, ln 21 to p. 27, ln 5;. P. 27, ln 6 to ln 15; p. 27, ln 16 to p. 28, ln 1; p. 28, ln 2 to p. 29, ln 2; p. 29, ln 3-22; p. 29, ln 23 to p. 30, ln 5-14 p. 30, ln 18 to p. 31 to p. 32, ln 8; p. 32, ln 9-11; p. 32, ln 14-24; p. 2, ln 25 to p. 33, ln 3; p. 33, ln 4-6; p. 33, ln 7-13; p. 33, ln 14-15;, p. 33, ln 16-24; p. 33, ln 25 to p. 34, ln 10; p. 34, ln 11-34;p. 35, ln 1-7; p. 35, ln 7-18;; p. 35, ln 22 to p. 36, ln 5; P. 36, ln 6-8; p. 36, ln 9-11; p. 36, ln 12-14; p. 36, ln 15-18; p. 36, ln 19-22; p. 36, ln 23 to p. 37, ln 2; p. 37, ln 11-14; 37, ln 23 to p. 38, ln 2; p. 38, ln 5-22; p. 38, ln 23 to p. 39, ln 2; p. 39, ln 3-6; p. 39, ln 7-13; p. 39, ln 22 to p. 41, ln 6; p. 41, ln 7 to p. 41, ln 13; p. 41, ln 16-24; p. 41, ln 25 to p. 42, ln 8; p. 42, ln 9-22; p. 42, ln 23 to p. 43, ln 7; p. 43, ln 8-25; p. 44, ln 1-17; p. 44, ln 22 to to p. 45, ln 16 p. 45, ln 17-13; p. 45, ln 24 to p. 46, ln 2; p. 46, ln 3 to 5; p. 36, ln 8 to p. 46, ln 11; p. 46, ln 15-18;. P. 46, ln 19 to p. 47, p. 47, ln 11; p. 47, ln 12-15; p. 47, ln 17 to p. 48 to p. 49, ln 8, p. 49, ln 9-18;; p. 50, ln 14 to p. 52, ln 23. P. 52, ln 24 to p. 53, ln 9; p. 55, ln 16 to p. 57, ln 14,; p. 59, ln 19 to p. 60, ln 3; p. 60, ln 4-12 p. 60, ln 21 to p. 61, ln1; p. 61, ln 7 to p. 61, ln 25; p 62, ln 5-13; p. 62, ln 14-19; p. 62, ln 20-23p. 62, ln 24 to p. 63, ln 7;. P. 63, ln 13-15; p. 63, ln 16-19; p. 64, ln 20 to p. 65, ln 7; p. 65, ln 18-24; p. 65, ln 25 to p. 66, ln 2; p. 66, ln 3 0 6; p. 66, ln 6-15; p. 66, ln 16-24; p. 66, ln 25 to p. 67, ln 15; p. 67, ln 16 to p. 24, ln 25; p. 68, ln 2 to 17; p. 68, ln 18-22;; p. 69, ln 6-11;; p. 70, ln 14-19; p. 70, ln 21 to p. 71, ln 1; p. 71, ln 2 to to 72, ln 4; p. 72 ln 5 to p. 73, ln 13; p. 73, ln 14 to p. 74, ln 2; p. 74, ln 3 to to 76, ln 11; p. 76, ln 12 to p. 790, ln 4; p. 79, ln 8-17; p. 79, ln 18 to p. 80, ln 15;; p. 80, ln 16to p. 82, ln 7; p. 82, ln 11 to p. 83 to p. 83, ln 21; p. 83, ln 22 to 25;p. 84, ln 1-6; p. 84, ln 7-25; p. 85, ln 6-15; p. 85, ln 16 to p. 86, ln 6; p. 86, ln 7-23; p. 86, ln 24 to p. 87, ln 2; p. 87, ln 3-25; p. 87 ln 18-25; p. 88, ln 1-7; p. 88, ln 8-18; p. 88, ln 19 to p. 89,

ln 16; p. 89, ln 16 to p. 90, ln 21; p. 90, ln 24 to p. 91, ln 1; p. 91, ln 2 to p. 92, ln 4; p. 92, ln 2-4; p. 93, ln 16-21; p. 93, ln 22 to p. 94, ln 1; p. 94, ln 2-6; p. 94, ln 23 to p. 95, ln 1; p. 95, ln 2-95, ln 11; p. 95, ln 12 to p. 96, ln 13; p. 96, ln 14-19; p. 96, ln 20-22; p. 97, ln 4 -25; p. 98, ln 1-12; p. 98, ln 21-25; p. 99, ln 1-3; p. 110 ln 10 top. 101, ln 19;. P. 101, ln 24 to p. 102, ln 18; p. 102, ln 19 to p. 103, ln 6; p. 103, ln 7 to p. 104, ln 7; p. 104, ln 8-11; p. 105, ln 7-13; p. 105, ln 24 to 106, ln 2 p. 106, ln 3 to p. 107 to p. 108, ln 6; p. 108, ln 15 to p. 109, ln 1; p. 109 to 110, ln 1; p. 110, ln 2-4 p. 11, ln 18 to p. 112, ln 15; p. 113 ln 21 to p. 114, ln 5;; p. 114, ln 23 to p. 115, ln 3; p. 115, ln 13-18; p. 116, ln 5 to 116, ln 25; p. 117, ln 1 to p. 119, ln 5; p. 119, ln 6-11; p. 119, ln 15-20; p. 119, ln 21 to 120, ln 23p 121, ln 2-20; p.121, ln 22 to 122, ln 15; p. 122, ln 16-24; p. 122, ln 25 to 123, ln to p. 124, ln 21 p. 125, ln 1 to 129, ln 13; p. 129, ln 14 to p. 131, ln 22; p. 132, ln 10-17 ; p. 134, ln 1 to ln 24; p. 134, ln 25 to p. 135, ln 23; p. 135, ln 25, ln 14; p. 136., ln 19 to p. 137, ln 14 to p. 138, ln 18; p. 138, ln 19 to p. 139, ln 25.

As to the April 8, 2009, Deposition of Janet Koprek, Plaintiff may use the following testimony: p. 6,ln 1 to p. 7, ln 2; p. p. 8, ln 4 to p. 11, ln 5; p. 11, ln 9 to p. 17, ln 6; p. 17, ln 10-13; p. 27 to p. 28, ln 23; p. 30, ln 1 to p. 31, ln 1p. 32, ln 2-9; p. 33, ln 17 to p. 35, ln 15; p. 26, ln 2 to p. 27, ln 14;; p. 37, ln 5 to p. 39, ln 22; p. 39. Ln 23 to p. 42, ln 18; p. 44ln 19 to p. 45, ln 18; p. 45, ln 23 to p. 47, ln 23 p. 48, ln 8-13; p. 48, ln 14 to p. 55, ln 12; p. 55, ln 16 to p. 56, ln 5; p. 56, ln 6-10; p. 56, ln 11-25;; p. 57, ln 10-23; p. 57, ln 24 to p. 58, ln 5;p. 48, ln 20 to p. 66, ln 25; p. 67, ln 1-25; p. 68, ln 1 to p. 69, ln 4; p. 69, ln 5 to p. 71, ln 9; p. 71, ln 11 to p. 73, ln6; p. 73, ln 9 to p. 74, ln 6; p. 74, ln 7 to 23; p. 74, ln 24 to p. 75, ln 9; to p. 76, ln 11 p. 76, ln 18-21; p. 77,ln 1-5; p 78, ln 23 to p. 79, ln 1; p. 79, ln 7-9; p. 79, ln 10-12; p. 79, ln 13 to p. 21; p. 79, ln 25 to p. 80, ln 7; p. 80, ln 19-24; p. 80, ln 25 to p. 81, ln 2; p. 81, ln 3-5; p. 81, ln 6-8; p. 81, ln 9-22; p. 81, ln 25 to p. 82, ln 18; p. 83, ln 3 to p. 84, ln 12 p. 84, ln 19-21; p. 86, ln 25 to p. 87 ln 23; p.

90, ln 16 to p. 91 to p. 91, ln 16; p. 92, ln 7-13; p. 92, ln 15-23; p. 92, ln 24 to to p. 93, ln 13; p. 93, ln 25 to p. 94, ln 11; p. 96, ln 2-9; p. 103, ln 12 to p. 106, ln 3; p. 107, ln 5-7; p. 109, ln 17 to p. 110, ln 20; p. 11, ln 10 to p. 112, ln 4; p. 112, ln 11 to p. 113, ln 5; p. 113, ln 6 to p. 117, ln 21; p. 121, ln 11 to p. 122, ln 13; p. 122, ln 14; p. 125, ln 9 p. 126, ln 2; p. 126, ln 3-7; p. 126, ln 8-11; p. 126, ln 12 to p. 127, ln 3; p. 127, ln 4-9; p. 127, ln 10-11; p. 127, ln 12-18; p. 127, ln 19 to p. 128 ln 2; p.128, ln 3-6; p. 128, ln 7-12; p. 128, ln 13 to p. 129 ln 14; p. 129, ln 15-25; p. 130, ln 1-8; p. 130, ln 9-11; p. 130, ln 12-17; p. 130, ln 18-21; p. 130, ln 22-25; p. 131, ln 1-3; p. 131, ln 4-5;; p. 131, ln 11 to p. 132, ln 4; p. 132, ln 5-18; p. 132, ln 19-24; p. 132, ln 25 to p. 133, ln2, p. 133, ln 3-12; p. 133, ln 13-56; p. 133, ln 19-19; p. 133, ln 20 to p. 134, ln 4-18; p. 134, ln 19 to p. 135, ln 2; p. 135, ln 3-21; p. 135, ln 19 to p. 136, ln 18; p. 136, ln 19-21; p. 136, ln 22; p. 137, ln 7 to p. 137, ln 18 p. 137, ln 19 to p. 138, ln 6; p. 138, ln 1-13; p. 138, ln 22-25; p. 139, ln 1-8; p. 139, ln 22 to p. 140 to p. 140, ln 10; p. 140, ln 11 to p. 142, ln 14; p. 144, ln 2; p. 148, ln 6 to p. 151, ln 7.

As to the November 25, 2008, Deposition of Tom Foster, Plaintiff may use the following testimony: p. 5 ln 11 to p. 12, ln 17; p. 13, ln 5 to p. 15, ln 20, p. 15, ln 21 to p. 16, ln 15; p. 16, ln 18 to p. 23, ln 6; p. 23, ln 7 to p. 26, ln 17 p. 26, ln 25to p. 36 ln 24; p. 37, ln 3 to p. 40, ln 3; p. 40, ln 4-7; p. 40, ln 9-13; p. 40, ln 18-23; p. 41, ln 1-3; p. 41, ln 12-23; p. 45, ln 6-14;; p. 46, ln 5-21; p. 46, ln 22 ln 22; p. 47, ln 23, ln 7; p. 48, ln 8-20; p. 48, ln 24 to p. 49, ln 23; p. 49, ln 24; p. 49, ln 25 to p. 55, ln 3; p. 55, ln 14-17; p. 55, ln 20-24; p. 55, ln 25 to p. 56, ln 8; p. 56,ln 9-17; p. 56, ln 18 to p. 57, ln 15; p. 57, ln 16-21; p. 57, ln 24 to p. 58, ln 16; p. 58, ln 20 to p. 59, ln 11; p. 59, ln3-11; p. 59, ln 12 to p. 60 to p. 64, ln 23; p. 65, ln 7 to p. 66, ln 23; p. 67, ln 15-23;; p. 71, ln 10 to p. 74, ln 16; p. 74, ln 22 to p. 76, ln 25; p. 84, ln 20 to p. 86, ln 3; p. 87, ln 2-21; p. 87, ln 22 to 88, ln 25; p. 90, ln 2 to p. 91, ln 10; p. 91, ln 13 to p. 92, ln 16; p. 94, ln 2 to p. 94, ln 21;

p. 94, ln 22 to p. 95, ln 5; p. 95, ln 11-19; p. 95, ln 20 to p. 96, ln 14; p. 99, ln 22 to p. 101, ln 25; p. 102, ln 1 to 102, ln 25; p. 103, ln 3- 19; p. 104, ln 15 to p. 105, ln 14; p. 105, ln 20; p. 108, ln 19 to p. 109, ln5;; p. 114, ln 13-13; p. 115, ln 7-17; p. 115, ln 18-22; p. 116, ln 3-19; p. 116, ln 20 to 117, ln 11 to p. 118, ln 21 p. 119, ln 2 -14; p. 1119, ln 17 to 120, ln 1; P. 120, ln 14 to p. 121, ln 4; p. 121, ln 14-21; p. 121,, ln 22 top. 122, ln 5; p. 122, ln 23 to p. 123, , ln 20;; p. 123, ln 21 to p. 124, ln 15; p. 124, ln 23 to p. 125, ln 23; p. 24, to p. 127, ln 1;; p. 128, ln 10-25; p. 129, ln 1-21.

As Plaintiff intends to testify at trial, he has no intention of using his deposition transcript. Notwithstanding, plaintiff may use the entirety of his deposition of October 7, 2008, and any components thereof due to the unforeseen circumstances.

Respectfully Submitted by,

/s/ Joshua Avigad

Lawrence P. Kaplan  
Joshua M. Avigad  
KAPLAN ASSOCIATES, LLC  
Attorneys for Plaintiff  
101 South Hanley Road  
Suite 1225  
St. Louis, Missouri 63105  
Telephone: 314.863.2929  
Facsimile: 314.863.9777

Attorneys for Eddy Clark

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of August, 2011, the foregoing was filed electronically with the Clerk of Court to be served on all parties by operation of the Court's electronic filing system.

/s/ Joshua M. Arizad